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8 **UNITED STATES DISTRICT COURT**
9
10 **DISTRICT OF ARIZONA**

11 Axxess Energy LLC, a Delaware limited
12 liability company,

13 Plaintiff,

14 v.

15 Clear Energy Systems, Inc., a Nevada
16 corporation,

17 Defendant.

18 No.

19 **COMPLAINT**

20 Plaintiff Axxess Energy LLC for its Complaint against Defendant Clear Energy
21 Systems, Inc., alleges as follows:

22 **I. GENERAL ALLEGATIONS**

23 **A. Parties**

24 1. Plaintiff Axxess Energy LLC (“Axxess”) is a Delaware limited liability
25 company with its principal place of business in Arvada, Colorado. Axxess has two
26 members, Sharna L. Coors and John K. Coors, both of whom are individuals who are
27 domiciled in, and therefore citizens of, the State of Colorado.

28 2. Defendant Clear Energy Systems, Inc. (“CES”) is a Nevada corporation with
its principal place of business in Tempe, Arizona.

29 **B. Jurisdiction and Venue**

30 3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(1)

1 as this is a dispute between citizens of different States and the amount in controversy
2 exceeds the sum of \$75,000, exclusive of interest and costs.

3 4. Venue is proper in this judicial district pursuant to the Stock Purchase
4 Agreement at issue in this action.

C. Factual Background

5. CES was formed in May, 2002. Its business model is designing and
6 developing a new radial engine fueled by gasoline or gaseous fuel, such as methane, natural
7 gas or propane, purportedly for various commercial, industrial and military applications.
8

9 6. Since its inception, CES has raised and spent approximately \$40,000,000 on
10 engine development.

11 7. On or about December 14, 2012, Axxess, Grand Creek Ranch Legacy Trust
12 (“Grand Creek”), and VP, Limited Liability Company (“VP”), as buyers, and CES, as
13 seller, entered into a Stock Purchase Agreement (the “SPA”) pursuant to which Axxess,
14 Grand Creek and VP agreed to purchase shares of common stock in CES for the total price
15 of \$3,000,000. Specifically, Axxess purchased 2,400,000 shares of common stock in CES
16 for \$1,800,000, Grand Creek purchased 1,300,000 shares of common stock for \$975,000,
17 and VP purchased 300,000 shares of common stock for \$225,000. A true and correct copy
18 of the SPA without exhibits is attached hereto as **Exhibit 1** and incorporated herein by
19 reference.

20 8. Axxess and Grand Creek are affiliated entities.

21 9. Mr. John Coors was at all relevant times and currently is the Managing
22 Member of Axxess.

23 10. At all relevant times, Mr. Mark Chenoweth was the Managing Member of
24 VP.

25 11. Messrs. Coors and Chenoweth are colleagues and communicated with each
26 other regarding Axxess, Grand Creek and VP's purchase of stock in CES.

27 12. Axxess, Grand Creek, and VP's investment in CES was contingent on the
28 functioning of CES's new engine prototype.

1 13. During the operational testing of the engine prototype, Mr. Coors was in
2 contact with CES's Chief Executive Officer ("CEO") at that time, Anthony J. Carmen, Jr.,
3 and Mr. Chenoweth was in contact with CES's Chief Operating Officer ("COO") at that
4 time.

5 14. Prior to Axxess, Grand Creek and VP entering into the SPA and purchasing
6 common stock in CES, CES's CEO and COO made certain statements to Axxess, Grand
7 Creek and VP relating to the performance of and contract orders for the engine being
8 developed by CES.

9 15. In particular, Messrs. Coors and Chenoweth first visited CES's office and
10 facilities on or about November 9, 2012. During this first visit, the engine was being
11 installed on a test track. Testing of the engine commenced approximately one week after
12 Messrs. Coors and Chenoweth's visit on November 9, 2012. During the testing period,
13 CES's former CEO stated to Mr. Coors that the engine prototype was working perfectly
14 and that it had operated flawlessly for ten hours. CES's former COO sent Mr. Chenoweth a
15 short video showing the engine prototype start and also stated that the engine was
16 performing well. Additionally, CES asserted that "hard contract orders" for more than 100
17 engines were in hand awaiting delivery. Messrs. Coors and Chenoweth communicated
18 with each other regarding the various representations made by CES's former CEO and
19 COO, including sharing the short video of the engine prototype purportedly in operation.

20 16. The representations made by CES's CEO and COO to Axxess, Grand Creek
21 and VP relating to the performance of the engine and contract orders were all made prior to
22 the time Axxess, Grand Creek and VP agreed to purchase stock in CES.

23 17. Axxess, Grand Creek and VP relied upon the statements made and
24 information provided by CES' former CEO and COO in agreeing to invest and purchase
25 stock in CES.

26 18. In mid-January, 2013, subsequent to purchasing stock in CES pursuant to the
27 SPA, Axxess, Grand Creek and VP discovered that the engine prototype had actually

1 operated for less than one hour, the main bearing failed, the engine was torn apart, and a
2 bearing redesign was required.

3 19. In addition, Axxess, Grand Creek and VP also learned that the "hard contract
4 orders" for over 100 engines were nothing more than expressions of interest from potential
5 buyers and that no contract or purchase orders actually existed.

6 20. Only after entering into the SPA and purchasing stock in CES did Axxess,
7 Grand Creek and VP learn that the representations made by CES's CEO and COO
8 regarding the performance of the engine and the status of contract orders for the engine
9 were not true.

10 21. Axxess, Grand Creek and VP would not have invested in and purchased
11 shares of CES but for the representations made by CES's former CEO and COO regarding
12 the performance of the engine prototype and the status of contract orders.

13 22. On or about January 18, 2013, Mr. Carmen was terminated from his position
14 as CEO of CES and a new CEO was appointed.

15 23. Shortly after discovering that the representations made by CES's CEO and
16 COO prior to entering into the SPA were not true, by letter dated January 29, 2013, Axxess
17 notified CES of the misrepresentations and demanded rescission of its, Grand Creek's and
18 VP's investments in CES.

19 24. CES refused to rescind the stock purchase and refund the \$3,000,000
20 purchase price paid by Axxess, Grand Creek and VP.

21 25. CES has admitted the misstatements and false information provided by its
22 former CEO and COO to Axxess, Grand Creek and VP prior to their purchase of stock
23 under the SPA.

24 26. On May 15, 2013, Grand Creek assigned all its rights, title and interest in
25 1,300,000 shares of common stock in CES to Mr. Coors who then assigned all his rights,
26 title and interest in such common stock to Axxess.

27 27. On April 21, 2014, VP assigned its rights, title and interest in its 300,000
28 shares of common stock in CES to Axxess.

1 28. Axxess is the owner and holder of the initial 4,000,000 shares of common
 2 stock in CES issued pursuant to the SPA, including the 1,300,000 shares and 300,000
 3 shares originally purchased by Grand Creek and VP, as evidenced by Stock Certificate
 4 Nos. 579, 580 and 838 (the “Initial Shares”). Axxess is also the owner of 1,277,558
 5 additional shares of common stock as evidenced by Stock Certificate Nos. 1300, 1301 and
 6 1341 issued on January 28, 2014 (the “Additional Shares”).

7 **D. CES’s Bankruptcy and Relief from the Automatic Stay**

8 29. On August 15, 2014, CES filed a Petition for Voluntary Relief under Chapter
 9 11 of the Bankruptcy Code. CES’s bankruptcy is currently pending in an action known as
 10 *In re Clear Energy Systems, Inc.*, Case No. 2:14-bk-12716-BKM, United States Bankruptcy
 11 Court for the District of Arizona (the “Bankruptcy Action”).

12 30. On August 14, 2015, the Court in the Bankruptcy Action granted CES and
 13 Axxess’s “Stipulation and Order Granting Relief from Automatic Stay to Pursue Recovery
 14 from Insurance Proceeds” pursuant to which relief from the automatic stay imposed by
 15 CES’s bankruptcy was granted to allow Axxess to pursue its claims against CES and to
 16 collect on any recovery solely from the insurance proceeds of CES’s D&O Insurance
 17 Policy. A true and correct copy of the Stipulation and Order Granting Relief from
 18 Automatic Stay is attached hereto as **Exhibit 2** and is incorporated herein by reference.

19 31. All conditions precedent to the bringing and maintenance of this action have
 20 been performed or have occurred.

21 **II. CLAIM FOR RELIEF**

22 **(Negligent Misrepresentation)**

23 32. Axxess incorporates paragraphs 1 through 31 above as if fully set forth
 24 herein.

25 33. CES’s former CEO and COO made false statements and supplied false
 26 information to Axxess, Grand Creek and VP relating to the performance of CES’s engine
 27 prototype and contract orders for the engine.

28 34. CES’s former CEO and COO supplied the false information to Axxess,

1 Grand Creek and VP in connection with the sale of CES common stock to Axxess, Grand
 2 Creek and VP.

3 CES's former CEO and COO failed to exercise reasonable care or
 4 competence in communicating the false information relating to the performance of its
 5 engine prototype and contract orders for the engine to Axxess, Grand Creek and VP.

6 CES's former CEO and COO intended for Axxess, Grand Creek and VP to
 7 rely on and/or knew Axxess, Grand Creek and VP would rely on the false information
 8 supplied in deciding whether to purchase stock in CES.

9 Axxess, Grand Creek and VP justifiably relied on the false information and
 10 statements of material facts made by CES in deciding to purchase common stock in CES.

11 Based upon the false information provided by CES, Axxess, Grand Creek and
 12 VP entered into the SPA and purchased the Initial Shares.

13 All rights, title and interest in the Initial Shares and Additional Shares owned
 14 by Grand Creek and VP have been assigned to Axxess.

15 Axxess is the current owner and holder of all the Initial Shares and
 16 Additional Shares.

17 Axxess has been damaged in an amount to be determined at trial as a result of
 18 CES's misrepresentations of material facts.

19 WHEREFORE, Plaintiff Axxess Energy LLC requests the Court enter judgment on
 20 its Claim for Relief against Defendant Clear Energy Systems, Inc. based upon its negligent
 21 misrepresentations in an amount to be proven at trial, together with pre- and post-judgment
 22 interest at the legal rate allowed by law, costs, attorney fees, and for such other and further
 23 relief the Court deems just and proper.

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1 Dated this 14th day of September, 2015.

2 SACKS TIERNEY P.A.

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4 By: */s/ Jeffrey S. Leonard*

5 Jeffrey S. Leonard

6 James S. Samuelson

7 Attorneys for Plaintiff

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